REMARKS

This is a full and timely response to the outstanding final Office Action mailed July 7, 2008. Through this response, claim 106 has been canceled to remove issues for appeal. Reconsideration and allowance of the application and pending claims 85-105 are respectfully requested.

I. Claim Rejections - 35 U.S.C. § 102(b)

A. Statement of the Rejection

Claim 95 has been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by *Campbell et al.* ("*Campbell*," U.S. Pat. No. 4,862,268). Applicants respectfully traverse this rejection.

B. Discussion of the Rejection

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b).

In the present case, not every claimed feature is represented in the *Campbell* reference. Applicants discuss the *Campbell* reference and Applicants' claims in the following.

Independent Claim 95

Claim 95 recites (with emphasis added):

> 95. An apparatus, comprising:
> a tuner; and
> a processor configured to control the tuner, the processor further configured to:
> ***receive an entitlement unit table*** (EUT), the EUT comprising an identifier of a first service and one or more ***entitlement unit numbers*** (EUNs) that each ***uniquely identify a service package*** that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service;
> responsive to user selection of the first service, determine whether at least one of the one or more EUNs matches an authorized EUN; and
> ***responsive to determining that there is a match between the one or more EUNs and the authorized EUN, configure the tuner to tune to the selected first service***.

Applicants respectfully submit that *Campbell* fails to disclose, teach, or suggest at least the above-emphasized claim features. The final Office Action alleges (page 3, emphasis in original) that the "*data transmitted seen in Figure 11 is considered an EUT*." Applicants respectfully disagree. Figure 11 of *Campbell* is described as follows (col. 12, line 60 – col. 13, line 2 of *Campbell*, emphasis added):

> Reference is now made to FIG. 11 wherein the data formats are shown for the data transmitted on the vertical interval of the television signals between data control system 12 and addressable converter 40. As previously mentioned, the transmitted data is of two types, namely control data generated by PCS 50 and text data generated by text formatters 54 (see FIG. 2). The control data is further divided into subscriber addressing data and channel control data. The format for both the control data and the text data is shown in the form of data words in FIG. 11.

There is no teaching or suggestion in this section or elsewhere in *Campbell* to suggest that the data words shown in Figure 11 are received as a "***table***," and there has been no technical reasoning set forth to support this conclusion. Claim 95 requires the receipt of a ***table***, or more specifically, an ***entitlement unit table***, which similar to program specific tables (PSTs), program association tables (PATs), *etc*., are transmitted and

hence received in the form of table structures. According to well-established case law, "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). For at least the reason that *Campbell* does not disclose an ***entitlement unit table***, it is respectfully submitted that claim 95 is allowable over *Campbell* and the rejection should be withdrawn.

In addition, claim 95 requires that the EUN ***uniquely identify a service package***. The final Office Action alleges the following (page 3, emphasis in the original):

> *The tier code 202 is at least one field that can be considered an EUN and as discussed in column 13, lines 9-11 the tier code defines the level of access required for the program in question.*

Applicants respectfully disagree. Col. 13, lines 9-11 of *Campbell* are reproduced below:

> Channel control word 200 includes a tier code 202 defining the level of access required for the program in question.

The level of access required for the program does not appear to be further defined in the *Campbell* disclosure (e.g., what format the "level" takes). However, assume for the sake of argument that the level (or tier code) is a binary number sequence, say 11011. If another program received by the converter 40 of *Campbell* falls into the same level of access, it is reasonable to assume that it also will have a tier code of 11011. Accordingly, it cannot be said that any tier code can ***uniquely identify a service package***. Stated another way, if one was given a tier code of 11011, how is one to say whether it is program A of a level of access to a subscriber or program B of the same level of access? For at least this additional and separate reason for patentability, Applicants respectfully request that the rejection be withdrawn.

Applicants also note that the final Office Action makes reference to other fields and data in *Campbell* for alleged disclosure of the above-emphasized claim features, but Applicants do not believe *Campbell* to disclose such features when reviewing such other fields.

Further, claim 95 requires ***responsive to determining that there is a match between the one or more EUNs and the authorized EUN, configure the tuner to tune to the selected first service***. The final Office Action (page 3) refers to col. 12, lines 16-15 and col. 15, lines 7-66, as well as Figure 17 of *Campbell*. Applicants note from Figure 17 of *Campbell* that the tuner "tunes" to the service (316) and then performs a comparison (e.g., 320, 322, etc.). In other words, the tuning cannot be responsive to a match. The other sections referred to by the final Office Action (e.g., col. 12 and col. 15) and elsewhere in *Campbell* appear to describe an operation where tuning occurs first, and then a determination of whether to process (e.g., descramble) the received content based on comparisons to codes, etc. Accordingly, since *Campbell* does not disclose the responsive to, tune features of claim 95, Applicants respectfully request that the rejection be withdrawn on these additional and separate grounds for patentability.

Due to the shortcomings of the *Campbell* reference described in the foregoing, Applicants respectfully assert that *Campbell* does not anticipate Applicants' claim 95. Therefore, Applicants respectfully request that the rejection of claim 95 be withdrawn.

II. Claim Rejections - 35 U.S.C. § 103(a)

A. Statement of the Rejection

Claims 85, 89 and 105 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell* in view of *Urakoshi et al.* ("*Urakoshi*," U.S. Pat. No. 6,067,564). Claims 86 and 87 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell* in view of *Urakoshi* in further view of applicant's admitted prior art (herein referred to as AAPA). Claims 88, 90-94 and 106 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell* in view of *Urakoshi* in further view of *Wasilewski* ("*Wasilewski*," U.S. Pat. No. 5,420,866). Claims 96-104 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell* in view of AAPA. Claims 98-104 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell* in view of *Wasilewski*. Applicants respectfully traverse these rejections.

B. Discussion of the Rejection

The M.P.E.P. § 2100-116 states:

> Office policy is to follow *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), in the consideration and determination of obviousness under 35 U.S.C. 103. . . the four factual inquires enunciated therein as a background for determining obviousness are as follows:
>
> (A) Determining the scope and contents of the prior art;
> (B) Ascertaining the differences between the prior art and the claims in issue;
> (C) Resolving the level of ordinary skill in the pertinent art; and
> (D) Evaluating evidence of secondary considerations.

In the present case, it is respectfully submitted that a *prima facie* case for obviousness is not established using the cited art of record.

1. Claims 85, 89 and 105 - 35 U.S.C. § 103(a) - *Campbell* in view of *Urakoshi*

Independent Claim 85

Claim 85 recites (with emphasis added):

> 85. A method, comprising:
> ***receiving an entitlement unit table (EUT)***, the EUT comprising an identifier of a first service and one or more ***entitlement unit numbers*** (EUNs) that each ***uniquely identify a service package*** that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service;
> responsive to user selection of the first service from an electronic program guide (EPG), determining whether at least one of the one or more EUNs matches an authorized EUN; and
> ***responsive to determining that there is a match between the one or more EUNs and the authorized EUN, tuning to the selected first service***.

Applicants respectfully submit that *Campbell* in view of *Urakoshi* fails to disclose, teach, or suggest at least the above-emphasized claim features. The final Office Action alleges (page 4, emphasis in original) that the "*data transmitted seen in Figure 11 is considered an EUT*." Applicants respectfully disagree. Figure 11 of *Campbell* is described as follows (col. 12, line 60 – col. 13, line 2 of *Campbell*, emphasis added):

> Reference is now made to FIG. 11 wherein the data formats are shown for the data transmitted on the vertical interval of the television signals between data control system 12 and addressable converter 40. As previously mentioned, the transmitted data is of two types, namely control data generated by PCS 50 and text data generated by text formatters 54 (see FIG. 2). The control data is further divided into subscriber addressing data and channel control data. The format for both the control data and the text data is shown in the form of data words in FIG. 11.

There is no teaching or suggestion in this section or elsewhere in *Campbell* to suggest that the data words shown in Figure 11 are received as a "***table***," and there has been no technical reasoning set forth to support this conclusion. Claim 85 requires the receipt of a ***table***, or more specifically, an ***entitlement unit table***, which similar to program specific tables (PSTs), program association tables (PATs), *etc.*, are transmitted and hence received in the form of table structures. According to well-established case law,

"All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). To the extent the final Office Action relies on *Campbell* for alleged disclosure of an ***entitlement unit table***, Applicants respectfully submit that *Campbell* does not disclose such features and hence it is respectfully submitted that claim 85 is allowable over *Campbell* in view of *Urakoshi*. Accordingly, Applicants respectfully request that the rejection be withdrawn.

In addition, claim 85 requires that the EUN ***uniquely identify a service package***. The final Office Action alleges the following (page 4, emphasis in the original):

> *The tier code 202 is at least one field that can be considered an EUN and as discussed in column 13, lines 9-11 the tier code defines the level of access required for the program in question.*

Applicants respectfully disagree. Col. 13, lines 9-11 of *Campbell* are reproduced below:

> Channel control word 200 includes a tier code 202 defining the level of access required for the program in question.

The level of access required for the program does not appear to be further defined in the *Campbell* disclosure (e.g., what format the "level" takes). However, assume for the sake of argument that the level (or tier code) is a binary number sequence, say 11011. If another program received by the converter 40 of *Campbell* falls into the same level of access, it is reasonable to assume that it also will have a tier code of 11011. Accordingly, it cannot be said that any tier code can ***uniquely identify a service package***. Stated another way, if one was given a tier code of 11011, how is one to say whether it is program A of a level of access to a subscriber or program B of the same level of access? To the extent the final Office Action relies on *Campbell* for alleged disclosure of an ***EUN*** that ***uniquely identify a service package***, and since *Campbell*

does not disclose such features, Applicants respectfully request that the rejection be withdrawn.

Applicants also note that the final Office Action makes reference to other fields and data in *Campbell* for alleged disclosure of the above-emphasized claim features, but Applicants do not believe *Campbell* to disclose such features when reviewing such other fields.

Further, claim 85 requires ***responsive to determining that there is a match between the one or more EUNs and the authorized EUN, tuning to the selected first service***. The final Office Action (page 4) refers to col. 12, lines 16-15 and col. 15, lines 7-66, as well as Figures 12 and 17 of *Campbell*. Applicants note from Figures 12 and 17 of *Campbell* that the tuner "tunes" to the service (316) and then performs a comparison (e.g., 320, 322, etc.). In other words, the tuning cannot be responsive to a match. The other sections referred to by the final Office Action (e.g., col. 12 and col. 15) and elsewhere in *Campbell* appear to describe an operation where tuning occurs first, and then a determination of whether to process (e.g., descramble) the received content based on comparisons to codes, etc. Accordingly, since *Campbell* does not disclose the "responsive to, tune" features of claim 85, and to the extent the final Office Action relies on *Campbell* for alleged disclosure of such features, Applicants respectfully request that the rejection be withdrawn on these additional and separate grounds for patentability.

Due to the shortcomings of the *Campbell* reference described in the foregoing, Applicants respectfully assert that *Campbell* in view of *Urakoshi* does not make obvious Applicants' claim 85. Therefore, Applicants respectfully request that the rejection of claim 85 be withdrawn.

Because independent claim 85 is allowable over *Campbell* in view of *Urakoshi*, dependent claim 89 is allowable as a matter of law for at least the reason that the

dependent claim 89 contains all elements of their respective base claim. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Dependent Claim 105

As set forth above, applicants respectfully submit that *Campbell* fails to disclose, teach, or suggest at least the features emphasized above for claim 95. *Urakoshi* does not remedy the deficiencies of *Campbell*. For at least the reasons that *Campbell* in view of *Urakoshi* fails to disclose, teach, or suggest the above-emphasized features of claim 95, Applicants respectfully submit that claim 105 is allowable as a matter of law.

2. Claims 86 and 87 - 35 U.S.C. § 103(a) - *Campbell* in view of *Urakoshi* in further view of *AAPA*

As set forth above, Applicants respectfully submit that *Campbell* in view of *Urakoshi* fails to disclose, teach, or suggest at least the features emphasized above for claim 85. *AAPA* does not remedy the deficiencies of *Campbell* in view of *Urakoshi*. For at least the reasons that *Campbell* in view of *Urakoshi* in further view of *AAPA* fails to disclose, teach, or suggest the above-emphasized features of claim 85, Applicants respectfully submit that claims 86 and 87 are allowable as a matter of law.

3. Claims 88, 90-94 and 106 - 35 U.S.C. § 103(a) - *Campbell* in view of *Urakoshi* in further view of *Wasilewski*

Applicants have canceled claim 106, hence rendering the rejection moot as to that claim. Applicants cancel claim 106 merely to reduce the issues for appeal, and believe the subject matter of now canceled claim 106 to be allowable over the cited art of record. As set forth above, Applicants respectfully submit that *Campbell* in view of *Urakoshi* fails to disclose, teach, or suggest at least the features emphasized above for claim 85. *Wasilewski* does not remedy the deficiencies of *Campbell* in view of *Urakoshi*. For at least the reasons that *Campbell* in view of *Urakoshi* in further view of *Wasilewski* fails to disclose,

teach, or suggest the above-emphasized features of claim 85, Applicants respectfully submit that claims 88, and 90-94 are allowable as a matter of law.

4. Claims 96-104 - 35 U.S.C. § 103(a) - *Campbell* in view of *AAPA*

As set forth above, Applicants respectfully submit that *Campbell* fails to disclose, teach, or suggest at least the features emphasized above for claim 95. *AAPA* does not remedy the deficiencies of *Campbell*. For at least the reasons that *Campbell* in view of *AAPA* fails to disclose, teach, or suggest the above-emphasized features of claim 95, Applicants respectfully submit that claims 96-104 are allowable as a matter of law.

5. Claims 98-104 - 35 U.S.C. § 103(a) - *Campbell* in view of *Wasilewski*

As set forth above, Applicants respectfully submit that *Campbell* fails to disclose, teach, or suggest at least the features emphasized above for claim 95. *Wasilewski* does not remedy the deficiencies of *Campbell*. For at least the reasons that *Campbell* in view of *Wasilewski* fails to disclose, teach, or suggest the above-emphasized features of claim 95, Applicants respectfully submit that claims 98-104 are allowable as a matter of law.

In summary, it is Applicants' position that a *prima facie* for obviousness has not been made against Applicants' claims. Therefore, it is respectfully submitted that each of these claims is patentable over the cited art of record and that the rejection of these claims should be withdrawn.

III. Double Patenting

Claim 106 has been objected to for alleged double-patenting. Although Applicants respectfully disagree, as set forth above, Applicants have canceled claim 106 to reduce issue for appeal, hence rendering the objection moot.

IV. Information Disclosure Statement

The final Office Action stated that one of the previously submitted foreign references could not be considered because no English translation was submitted. Applicants acknowledge this statement.

V. Canceled Claims

As identified above, claim 106 has been canceled from the application through this response without prejudice, waiver, or disclaimer. Applicants reserve the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

CONCLUSION

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all allegations of well-known art and official notice, and potentially similarly interpreted statements (e.g., "known statements" such as found on page 5, claim 85; page 7, claim 88, and any others, including those where the rationale used for rejecting a claim incorporates the rationale for claims 85 and 88) should not be considered well known or known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

/dr/
David Rodack
Registration No. 47,034

THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.
Suite 1500
600 Galleria Parkway
Atlanta, Georgia 30339
(770) 933-9500